IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1143/06

Shri.Pokardas Dhukaldas Swami .....Applicant

V/s.

The state of Maharashtra .... Respondent

Shri.Aabad H.H. Ponda for the applicant.
Miss.S.V. Gajre APP for the State.

CORAM : V.M. KANADE, J.
DATE : 21/04/06

P.C:

1. Heard the learned Counsel for the applicant and the learned APP for the State.

2. The applicant was arrested on 21/01/2006 in connection with C.R.No.8/2006 registered with DCB.,C.I.D. Unit No.1 for the offences punishable U/s.465, 467, 468, 471, 420, 381, 34 of IPC.

3. It is the case of the prosecution that one Munaf had forged signature of MLC Shri.Madhukar Chavan and had made an attempt of siphoning-off an

amount of Rs.15 lacs. Unfortunately complaint was filed in time and said amount therefore, could not be withdrawn by the accused. Learned Counsel for the applicant submitted that offence is committed by the other accused. The applicant is a contractor who undertakes repairs on behalf of Government Authorities such as MHADA. There were certain buildings where urgent repairs had to be undertaken and other accused gave an assurance that they could obtain recommendation from said MLC Shri.Madhukar Chavan. It is further submitted that relying on the said assurance he paid certain amount to him who handed over said forged letters of MLC Shri.Madhukar Chavan. Learned Counsel submitted that offences punishable U/s.465, 467, 568, 471, 420, 381, 34 of IPC are not committed by the present applicant but committed by other accused. He submitted that he had no knowledge that said documents had been forged by the other accused. Learned Counsel submitted that therefore his role in the commission of said offence was merely that he relied on the assurance given by the other accused and obtained letters of recommendation from MLC Shri. Madhukar Chavan.

4. Learned APP appearing on behalf of the State vehemently opposed this application for bail. She submitted that the applicant and other accused were absconding, had conspired to siphon-off the funds which were made available to the MLC by the government for carrying out development works in his constituency. She further submitted that public funds were sought to be disbursed and because the police had taken timely action, money could not be withdrawn by the applicant and other accused. She submitted that though chargesheet has been filed, this is not a fit case to release the accused on bail.

5. It is a settled principle of law that it is consistently held that the approach which is to be taken by the Court should not be to refuse bail as and by way of punishment to the applicant for the commission of the said offence, though in case of certain crimes the facts and circumstances of the case also have to be taken into consideration. From the record and material which is shown it does appear that the applicant is carrying out works of repairs and reconstruction as a contractor on behalf of Government and MHADA. Even according to the

prosecution, letters which were forged and fabricated were handed over by the other accused to the present applicant, since chargesheet has been filed, in my view, continued detention of the applicant in custody is not necessary.

6. The applicant has a fixed place of residence in Mumbai. He is not likely to abscond.

7. The applicant be released on bail in the sum of Rs.10,000/- with one or two sureties in the like amount. The applicant shall report to DCB.,C.I.D. Unit No.1 once in a month. The applicant shall not tamper with the evidence or threaten the witnesses. The applicant initially may furnish cash bail and thereafter to furnish regular sureties in the like amount within period of two weeks.

8. If any complaint is received by I.O. against the present applicant, liberty is given to the Public Prosecutor to apply for cancellation of bail.

9. Trial court shall not be influenced by any observations made by this court while passing this order and the same may not be construed as an

expression of opinion of the case and decide the case on its own merit and in accordance with law.

10. Application is accordingly disposed of.

V.M. KANADE, J.